

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

ANTHONY LAMONT MOORE,

Plaintiff,

v.

PEGGY ERICKSON, et al.,

Defendants.

CASE No. 2:20-cv-219

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Vermaat's Report and Recommendation in this matter (ECF No. 36) and Defendants' Objection to the Report and Recommendation (ECF No. 41). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Defendants' Objections. After its review, the Court finds

that Magistrate Judge Vermaat's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends the Court deny Defendants' motion for summary judgment because a genuine issue of material fact exists regarding Plaintiff's exhaustion of administrative remedies. In their objection, Defendants contend that the evidence of lack of exhaustion is so overwhelming that there is no genuine issue of material fact regarding exhaustion. Defendants, however, fail to deal with the assertions made by Plaintiff in a verified complaint that the grievance procedures were made unavailable to him when the grievance coordinator failed to process his step 1 grievances. Defendants may believe these assertions are not credible given the evidence they have, but that is not a basis for summary judgment. As the Magistrate Judge properly found, a bench trial will be necessary to sort out the competing accounts. The Report and Recommendation carefully, thoroughly, and accurately addresses the exhaustion issue and the Court agrees, on *de novo* review, with the Magistrate Judge's recommendation for the very reasons the Report and Recommendation delineates.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 36) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendants' Motion for Summary Judgment (ECF No. 27) is **DENIED**.

IT IS FURTHER ORDERED that this matter is **REMANDED** to the Magistrate Judge for a bench trial / evidentiary hearing on the issue of exhaustion.

Dated: January 14, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE